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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE TESLA, INC. SECURITIES
LITIGATION

Case No. 3:18-cv-04865-EMC

**GOLDMAN SACHS' RESPONSE TO
PLAINTIFF'S ADMINISTRATIVE
MOTION TO CONSIDER WHETHER
ANOTHER PARTY'S MATERIAL
SHOULD BE SEALED (ECF NO. 369)**

1 Goldman Sachs & Co. LLC (“Goldman Sachs”) submits this Response to Plaintiff’s
 2 Administrative Motion to Consider Whether Another Party’s Material Should be Sealed (ECF No.
 3 369) (“Administrative Motion”). The GS Document (defined below) is a confidential, non-public
 4 document, the public disclosure of which would risk competitive harm to Goldman Sachs. The
 5 document should be sealed in its entirety pursuant to Civil Local Rule 79-5.

6 **I. BACKGROUND**

7 The Administrative Motion relates to certain confidential exhibits and deposition
 8 testimony of Defendants and third parties, including one Goldman Sachs document (the “GS
 9 Document”): a communication amongst Goldman Sachs’ employees that attaches a presentation
 10 the Goldman Sachs team prepared regarding Elon Musk’s August 7, 2018 bid to take Tesla private
 11 (the “Take Private Bid”). Administrative Motion at 2 (Exhibit 265). The information contained in
 12 the GS Document is not publicly available. Declaration of Chris Buddin (“Buddin Decl.”) ¶ 3. It
 13 is Goldman Sachs’ practice to maintain all such nonpublic documents and communications as
 14 strictly confidential. *Id.* The GS Document is therefore a confidential, non-public document that
 15 should be sealed. As explained in the accompanying Buddin Declaration, public disclosure of the
 16 GS Document would reveal Goldman Sachs’ proprietary analysis and internal methodologies for
 17 evaluating and valuing companies, markets, and transactions and cause Goldman Sachs
 18 competitive harm. Buddin Decl. ¶¶ 5, 7.

19 **II. ARGUMENT**

20 Civil Local Rule 79-5 provides that documents that are “privileged, protectable as a trade
 21 secret or otherwise entitled to protection under the law” may be sealed. L.R. 79-5.

22 A party seeking to seal information in connection with a dispositive motion must typically
 23 articulate “compelling reasons” to justify its request. *Kamakana v. City & Cty. of Honolulu*, 447
 24 F.3d 1172, 1178-79 (9th Cir. 2006) (internal quotations omitted). Under the compelling reasons
 25 standard, the Court must balance the harm that would result to the party seeking to seal the
 26 information against “the general history of access and the public policies favoring disclosure, such
 27 as the public interest in understanding the judicial process.” *Id.* (internal quotations omitted).

1 **A. The GS Document Should Be Sealed As Competitively Sensitive Business Information**

2 The Ninth Circuit has made clear that “business information that might harm a litigant’s
 3 competitive strategy” is sealable information. *In re Elec. Arts*, 298 Fed. App’x 568, 569 (9th Cir.
 4 2008) (cited by *TVIIM, LLC v. McAfee, Inc.*, No. 13-cv-04545-HSG, 2015 WL 4448022, at *4
 5 (N.D. Cal. July 9, 2015); *see also Lawson v. Grubhub, Inc.*, No. 15-cv-05128-JSC, 2017 WL
 6 2951608, at *9 (N.D. Cal. July 1, 2017) (same). This includes “any formula, pattern, device or
 7 compilation of information which is used in one’s business, and which gives him an opportunity to
 8 obtain an advantage over competitors who do not know or use it.” *In re Elec. Arts*, 298 Fed.
 9 App’x at 569. Where a party shows that its documents contain sources of business information
 10 that might harm its competitive standing, the need for public access to the records is lessened. *See*
 11 *Nixon v. Warner Comm’ns, Inc.*, 435 U.S. 589, 598, 98 S.Ct. 1306 (1978); *see also Ehret v. Uber*
 12 *Techs., Inc.*, No. 14-cv-00113-EMC, 2015 WL 12977024, at *2 (N.D. Cal. Dec. 2, 2015) (granting
 13 motion to seal party’s “sensitive, proprietary business strategy and financial information”). The
 14 need for public access is further lessened where, as here, the information sought to be sealed has
 15 no direct bearing on the issues presented in Plaintiff’s motion. *See Oracle Partners, L.P. v.*
 16 *Concentric Analgesics, Inc.*, No. 20-cv-03775-HSG, 2021 WL 1022874, *2 (N.D. Cal. March 17,
 17 2021) (compelling reasons standard satisfied because names of “non-party shareholders” were
 18 non-public and “irrelevant to the allegations in the complaint”); *Music Grp. Macao Com. Offshore*
 19 *Ltd. v. Foote*, No. 14-cv-03078-JSC, 2015 WL 3993147, at *6 (N.D. Cal. June 30, 2015) (public
 20 interest “limited” where content sought to be sealed “is irrelevant to the Court’s decision”); *G&C*
 21 *Auto Body Inc. v. Geico Gen. Ins. Co.*, No. C06-04898 MJJ, 2008 WL 687372, at *2 (N.D. Cal.
 22 Mar. 11, 2008) (sealing third-party information that was of “little or no relevance to the issues that
 23 were raised”). Some courts have even applied the “good cause” standard when faced with similar
 24 circumstances. *See Music Grp. Macao*, 2015 WL 3993147, at *10 (applying good cause standard
 25 because the court “did not consider” the material “in connection with Defendant’s dispositive
 26 motion”); *G&C Auto*, 2008 WL 687372, at *3 (applying good cause standard where documents
 27 submitted in connection with a dispositive motion were not actually considered).

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1 The GS Document is quintessential confidential business information that should be
 2 sealed. As the Buddin Declaration establishes, the GS Document is a confidential communication
 3 and presentation reflecting Goldman Sachs' sensitive, nonpublic analysis regarding the Take
 4 Private Bid. Buddin Decl. ¶ 4. It contains Goldman Sachs' proprietary analysis and internal data
 5 and outlines Goldman Sachs' internal methodologies for evaluating and valuing companies,
 6 markets, and transactions. *Id.* ¶ 5. The presentation is also marked as a "Preliminary &
 7 Confidential Draft" on every page. *Id.* ¶ 6.

8 The Buddin Declaration also establishes that public disclosure of the GS Document, which
 9 would reveal the proprietary analysis and methodologies of Goldman Sachs, would cause
 10 Goldman Sachs competitive harm. *Id.* ¶ 7. Goldman Sachs' methods for evaluating companies,
 11 markets, and transactions provide the foundation for its advice to clients. *Id.* ¶ 8. The firm's
 12 expertise in approaching mergers and acquisitions is the product of significant investment by the
 13 firm. *Id.* This information should not be publicly filed because it has little or no relevance to the
 14 issues presented in Plaintiff's reply and its publication would substantially impair Goldman Sachs'
 15 business and competitive position.

16 **B. Alternatively, the Court Should Seal Significant Portions of the GS Document and
 17 Order that a Redacted Version be Placed in the Public File**

18 Civil Local Rule 79-5 provides that "[i]f the Administrative Motion to File Under Seal is
 19 denied or granted in part, the document sought to be sealed will not be considered by the Court
 20 unless the Submitting Party files a revised redacted version of the document which comports with
 21 the Court's order within 7 days after the motion is denied." L.R. 79-5(f)(3). Goldman Sachs
 22 believes that the GS Document should be sealed in its entirety. However, if the Court is not
 23 inclined to do so, and believes only portions of the document should be sealed, Goldman Sachs is
 24 prepared to promptly meet and confer with Plaintiff and to submit a redacted version of the GS
 25 Document in accordance with the Court's guidance.

26 **III. CONCLUSION**

27 For the foregoing reasons, Goldman Sachs respectfully requests that the GS Document
 28 remain under.

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2 Respectfully submitted,
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